

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
PAUL S. MALINGAGIO, Cal. Bar No. 90451
3 J. JUDY SUWATANAPONGCHED, Cal. Bar No. 266313
333 South Hope Street, 43rd Floor
4 Los Angeles, California 90071-1422
Telephone: 213-620-1780
5 Facsimile: 213-620-1398
pmalingagio@sheppardmullin.com
6 jsuwatanapongched@sheppardmullin.com

7 Attorneys for Defendant
ICAP PATENT BROKERAGE LLC

8 Specially Appearing for Defendant
9 CASCADE ESTATES, LTD.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 CANOPUS BIOPHARMA, INC., a
14 Nevada corporation, CANOPUS
CORPORATION, LTD., a Belize
15 limited company,

16 Plaintiffs,

17 v.

18 SUPPORTIVE THERAPEUTICS,
LLC, a Delaware limited liability
19 company, MICHAEL J. MORIN, an
individual, ICAP PATENT
20 BROKERAGE LLC, a Delaware
limited liability company, CASCADE
21 ESTATES, LTD., a Mauritius limited
company, and DOES 1 through 20,
22 inclusive,

23 Defendants.
24
25
26
27
28

Case No. 2:15-cv-09439-PSG (DTBx)

**DEFENDANTS ICAP PATENT
BROKERAGE LLC'S AND
CASCADE ESTATES, LTD.'S
REPLY IN SUPPORT OF MOTION
TO DISMISS, OR,
ALTERNATIVELY, TRANSFER,
COMPLAINT**

Date: March 28, 2016

Time: 1:30 p.m.

Room: 880

Judge: Hon. Philip S. Gutierrez

Complaint Filed: October 27, 2015
[Los Angeles County Superior Court
Case No. BC598451]

Removal Date: December 7, 2015

1 **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

2 The Opposition of Plaintiffs Canopus BioPharma, Inc. and Canopus
3 Corporation, Ltd. (collectively, “Plaintiffs”) wholly fails to address the facts and
4 legal issues that are briefed in the Motion to Dismiss, or Alternatively, Transfer
5 Complaint (“Motion”) filed by Defendants Cascade Estates, Ltd. (“Cascade”) and
6 ICAP Patent Brokerage LLC (“ICAP”). Central District Local Rule 7-9 requires
7 any party opposing a motion to file a memorandum stating “all the reasons” it
8 opposes the motion. “[F]ailure to respond in an opposition brief to an argument put
9 forward in an opening brief constitutes waiver or abandonment in regard to the
10 uncontested issue.” *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802 F.
11 Supp. 2d 1125, 1132 (C.D. Cal. 2011) (quotation marks omitted); *see also Jenkins v.*
12 *County of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (plaintiff abandoned
13 claims by not raising them in opposition); *In re Polycom, Inc.*, 78 F. Supp. 3d 1006,
14 1014 n.6 (N.D. Cal. 2015) (plaintiff’s failure to respond to arguments in motion to
15 dismiss constitutes waiver of issue); *Song Fi Inc. v. Google, Inc.*, 108 F. Supp. 3d
16 876, 888 (N.D. Cal. 2015) (same). Plaintiffs’ failure to address the arguments set
17 forth in the Motion constitutes a waiver on those issues, and the Court should grant
18 ICAP’s and Cascade’s Motion.

19
20 To the extent that Plaintiffs’ Opposition attempts to address the Motion’s
21 substantive arguments, it is meritless.

22
23 **I. PLAINTIFFS LACK STANDING TO SUE.**

24 Plaintiffs admit that Canopus BioPharma, Inc.’s status in California is “FTB
25 Forfeited.” While Canopus BioPharma, Inc. is in default of the laws of California, it
26 cannot maintain this action or defend against the Motion. *Weinstock v. Sinatra*, 379
27 F. Supp. 274, 275-77 (C.D. Cal. 1974).

1 Plaintiffs do not even attempt to address Canopus Corporation, Ltd.'s lack of
 2 standing and authority to bring this lawsuit, and therefore concede this action should
 3 be dismissed because Canopus Corporation, Ltd. cannot maintain this lawsuit.
 4 *United Medical Mgmt. v. Gatto*, 49 Cal. App. 4th 1732, 1740 (1996).

5
 6 Thus, as briefed in the Motion and not opposed by Plaintiffs, the Court should
 7 grant this Motion and dismiss Plaintiffs' Complaint because Plaintiffs could not
 8 have brought this lawsuit in California state court and are likewise barred from
 9 maintaining or prosecuting this action in federal court with diversity jurisdiction.

10
 11 **II. PLAINTIFFS SUED CASCADE ESTATES, LTD., THE ENTITY THAT**
 12 **HAS A FORUM SELECTION CLAUSE WITH PLAINTIFFS.**

13 Plaintiffs do not dispute that the Security Agreements contain a valid forum
 14 selection clause designating New York, not California. Instead, Plaintiffs argue that
 15 they sued a Mauritius limited company called Cascade Estates, Ltd., not the Cascade
 16 Estates Ltd., a British Virgin Islands limited company, that is a party to the Security
 17 Agreements with a forum selection clause.

18
 19 However, the alleged basis for Plaintiffs' claims is the foreclosure sale of
 20 Plaintiffs' assets under the Security Agreement. (Complaint, ¶¶ 24-27, 58-59, 67-
 21 68.) The entity that is a party to the Security Agreements, foreclosed on the
 22 Property at issue in this lawsuit, is on the corporate register of the British Virgin
 23 Islands, and was the winning bidder for both the March 2014 and August 2015
 24 online auctions of all Plaintiffs' rights in the Property is Cascade Estates, Ltd., a
 25 British Virgin Islands limited company. (Declaration of Peter Zajac in support of
 26 Motion [Dkt. 18-1], ¶¶ 2-3, 5; *see generally* Request for Judicial Notice in support
 27 of Motion [Dkt. 19], Exh. 1 (New York Complaint).) Plaintiffs' own Complaint
 28 does not deny these facts. (Complaint, ¶¶ 24-27.) Further, Plaintiffs present no

1 evidence to dispute these facts established through the Declaration of Peter Zajac
2 and the Request For Judicial Notice filed in support of the Motion.

3
4 Plaintiffs' baseless claim that some other Cascade entity exists that is a
5 Mauritius limited company is completely unsupported and should be disregarded. A
6 valid forum selection clause designating New York as the proper forum exists
7 between Plaintiffs and Cascade. (Request for Judicial Notice in support of Motion
8 [Dkt. 19], Exh. 1 (New York Complaint) at Exhibits A-B, ¶ 11, and Exhibits C-D,
9 ¶ 15.) Accordingly, the Court should dismiss or, at the very least transfer, this
10 action to New York pursuant to the forum selection clause.

11
12 **III. CASCADE ESTATES, LTD. IS A NOT A CITIZEN OF CALIFORNIA.**

13 Without addressing any of the Motion's arguments that Plaintiffs' insufficient
14 jurisdictional allegations fail to establish personal jurisdiction over Cascade,
15 Plaintiff erroneously argue that Cascade's citizenship is determined by the residence
16 of its "sole owner." The citizenship of the owner of Cascade, a company organized
17 under the laws of the British Virgin Islands with a principal place of business in
18 Mauritius, is irrelevant to determining the citizenship of Cascade. *See JPMorgan*
19 *Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 91 (2002)
20 ("corporation of a foreign State is, for purposes of jurisdiction in the courts of the
21 United States, to be deemed, constructively, a citizen or subject of such State."); 28
22 U.S.C. § 1332 (c) ("corporation shall be deemed to be a citizen of every State and
23 foreign state by which it has been incorporated and of the State or foreign state
24 where it has its principal place of business"). Thus, the residence of the "owner" of
25 a corporation does not establish citizenship of the corporation.

26
27 Plaintiffs' argument that there is personal jurisdiction because it is a "matter
28 of agency or alter ego" is further unsupported. The Complaint does not contain any

1 allegations that Cascade's owner is an alter ego or agent of Cascade, or vice versa.
2 Nor do Plaintiffs submit any evidence or even any argument to support these
3 unfounded arguments of alter ego and agency.
4

5 Therefore, the Court should dismiss Plaintiffs' Complaint for lack of personal
6 jurisdiction.
7

8 **IV. CONCLUSION**

9 For the foregoing reasons and those briefed in the Motion, the Court should
10 dismiss Plaintiffs' Complaint. In the alternative, the Court may also transfer this
11 action to New York.
12

13 Dated: March 14, 2016

14 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
15

16 By /s/ Juthamas J. Suwatanapongched
17 PAUL S. MALINGAGIO
18 JUTHAMAS J. SUWATANAPONGCHED

19 Attorneys for Defendants
20 ICAP PATENT BROKERAGE LLC
21 and CASCADE ESTATES, LTD.
22
23
24
25
26
27
28

1 PROOF OF SERVICE
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 *Canopus Biopharm, et. al. v. Supportive Therapeutics, et al.*
4 USDC Case No. 2:15-cv-09439-PSG (DTBx)

5 At the time of service, I was over 18 years of age and **not a party to this action**. I
6 am employed in the County of Los Angeles, State of California. My business address is
7 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

8 On March 14, 2016, I served true copies of the following document(s)
9 described as **DEFENDANTS ICAP PATENT BROKERAGE LLC'S AND CASCADE**
10 **ESTATES, LTD.'S REPLY IN SUPPORT OF MOTION TO DISMISS, OR,**
11 **ALTERNATIVELY, TRANSFER, COMPLAINT** on the interested parties in this action
12 as follows:

13 ☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically
14 filed the document(s) with the Clerk of the Court by using the CM/ECF system.
15 Participants in the case who are registered CM/ECF users will be served by the CM/ECF
16 system. Participants in the case who are not registered CM/ECF users will be served by
17 mail or by other means permitted by the court rules.

18 Duane M. Linstrom
19 Law Office of Duane M. Linstrom
20 11750 Sorrento Valley Road, Suite 250
21 San Diego, California 92121

Tel: 619-379-3496
dlinstrom@live.com
Attorney for Plaintiffs Canopus Corporation
Ltd. and Canopus Biopharma, Inc.

22 Daniel S. Schecter
23 Noah L. Fischer
24 Latham & Watkins LLP
25 355 South Grand Avenue
26 Los Angeles, California 90071

Tel: 213-485-1234
daniel.schecter@lw.com
noah.fischer@lw.com
Attorneys for Defendants Supportive
Therapeutics, LLC and Michael J. Morin

27 I declare under penalty of perjury under the laws of the United States of America
28 that the foregoing is true and correct and that I am employed in the office of a member of
the bar of this Court at whose direction the service was made.

Executed on March 14, 2016, at Los Angeles, California.

18ZT-225556


TRACY L. FIELDING